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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 WASTE ACTION PROJECT,
10 Plaintiff,
11 v.
12 GIRARD RESOURCES & RECYCLING,
13 Defendant.

9 CASE NO. 2:21-cv-00443-RAJ-GJL

10 **ORDER ADOPTING REPORT
11 AND RECOMMENDATION**

14 The Court, having reviewed the Report and Recommendation of Magistrate Judge Grady
15 J. Leupold (Dkt. 173), objections to the Report and Recommendation, and the remaining record,
16 does hereby find and **ORDER**:

- 17 (1) The Court adopts the Report and Recommendation (Dkt. 173).
18 (2) Defendant's Motion for Summary Judgment (Dkt. 155) is **DENIED**.
19 (3) Plaintiff's Motion for Partial Summary Judgment (Dkt. 149) is **GRANTED**. On
20 the undisputed record, Defendant violated the Clean Water Act ("CWA") as
21 detailed below:

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1 **Unpermitted Discharge Violations**

2 Defendant discharged stormwater associated with industrial activity to navigable waters
3 from a point source without National Pollutant Discharge Elimination System (“NPDES”) permit
4 authorization. Defendant violated the prohibition on unpermitted discharges at least once per
5 calendar quarter between February 1, 2016, and March 2, 2023, when it obtained NPDES permit
6 coverage, for a total of 29 violations.

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8 **Violations of the Industrial Stormwater General Permit (“ISGP”)**

9 Defendant discharged stormwater associated with industrial activity to navigable waters
10 while in violation of the terms and conditions of its NPDES permit, the ISGP, after it obtained
11 permit coverage on March 2, 2023.

- 12 (1) Defendant violated Condition S3 of the ISGP once for each day that it failed to
13 properly develop a Stormwater Pollution Prevention Plan (“SWPPP”), including:
14 a. Between March 3, 2023, and July 19, 2023, Defendant violated Condition
15 S3.A for each day it did not have any SWPPP in place (138 days);
16 b. Between July 20, 2023, and December 27, 2023, Defendant violated
17 Condition S3.B for each day that its First SWPPP was deficient (140
18 days); and
19 c. Between December 28, 2023, and the date of Plaintiff’s Motion for Partial
20 Summary Judgment, June 28, 2024, Defendant violated Condition S3.B
21 for each day that its Second SWPPP was deficient (203 days).
22 (2) Defendant violated the ISGP in several respects related to its slurry processing
23 embankment, including:

- a. Defendant did not sample the stormwater discharges from the slurry processing embankment, which it was required to do quarterly pursuant to Condition S4.B (4 violations);
 - b. Defendant did not submit a Discharge Monitoring Report (“DMR”) for the slurry processing embankment, which it was required to do quarterly pursuant to Condition S9.B.4.a (4 violations); and
 - c. Between March 3, 2024, and the date of Plaintiff’s Motion for Partial Summary Judgment, June 28, 2024, Defendant violated Condition S3.A.1 for each day that it failed to implement stormwater Best Management Practices (“BMPs”) on the slurry processing embankment (483 days).
Defendant violated Condition S3.B.4.b of the ISGP by for each day that it failed to implement required BMPs, including:
 - a. Between March 3, 2023, and June 5, 2023, failing to implement erosion and sediment control BMPs (94 days);
 - b. Between March 3, 2023, and June 5, 2023, failing to implement BMPs preventing the use of process slurry water as a dust suppressant (94 days);
 - c. Between March 3, 2023, and July 24, 2023, failing to keep dumpsters under cover or fit with a storm-resistant lid (143 days);
 - d. Between March 3, 2023, and the date of Plaintiff’s Motion for Partial Summary Judgment, June 28, 2024, failing to implement BMPs to prevent “track-out” (483 days);
 - e. A single violation for failing to implement BMPs for the handling and storing of slurry-processing solids;

1 f. A single violation for failing to implement BMPs preventing the discharge
2 of a large volume of highly turbid water.

3 In sum, on the undisputed record, the Court finds that Defendant committed 1,334
4 discrete violations of the CWA as a matter of law within the statute of limitations. The Clerk is
5 directed to send copies of this Order to counsel for both parties, and to the Hon. Grady J.
6 Leupold.

7 DATED this 30th day of September, 2024.

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12 The Honorable Richard A. Jones
13 United States District Judge
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